



SOUTHERN AFRICAN CHIEF JUSTICES FORUM

Second Liason Officer Seminar 2003

Opening speech from Chief Justice Strydom, Supreme Court Namibia

SPEECH ON OCCASION OF THE CONFERENCE OF LIAISON OFFICERS OF SADC COUNTRIES, AT HEJA LODGE ON 28 NOVEMBER 2003.

LADIES AND GENTLEMEN,

ALLOW ME TO WELCOME YOU ALL TO NAMIBIA. IT IS INDEED AN HONOUR AND A PRIVILEGE FOR US TO HAVE YOU IN NAMIBIA AND WE HOPE THAT YOU WILL FIND THE TIME TO SEE A LITTLE MORE OF OUR COUNTRY. THIS MAY NOT BE THE BEST TIME OF THE YEAR TO VISIT NAMIBIA BECAUSE IT IS NOW STILL DRY AND HOT. LET ME HOWEVER ASSURE YOU THAT WITH A LITTLE RAIN THAT WHICH NOW LOOKS DEAD AND DRY WILL BE TRANSFORMED INTO GREEN GRASSLAND WITH GREEN AND BLOSSOMING TREES. AFRICA IS INDEED A CONTINENT OF GREAT CONTRASTS AND EACH COUNTRY HAS SOMETHING UNIQUE TO OFFER

LADIES AND GENTLEMEN, FOUR YEARS AGO THE CHIEF JUSTICES AND OTHER JUDGES OF THE SADC COUNTRIES HAD AN INFORMAL GET-TOGETHER. WITH THE HELP AND FINANCIAL SUPPORT OF THE VENICE COMMISSION WE HAVE ADVANCED TO THE STAGE WHERE WE ARE ON THE BRINK OF ORGANIZING OURSELVES INTO A FORMAL BODY. WE WILL SOON HAVE OUR OWN CONSTITUTION AND WILL TAKE

UP A LEGAL PERSONALITY WHICH WILL ALLOW US TO ACT FOR AND ON BEHALF OF ALL THOSE WHO ARE MEMBERS OF THIS BODY.

AT THIS VERY FIRST MEETING IT WAS ALREADY RESOLVED TO ESTABLISH A LINK BETWEEN THE SUPREME COURTS OF THE VARIOUS COUNTRIES WHEREBY EACH WOULD HAVE ACCESS TO IMPORTANT CONSTITUTIONAL JUDGMENTS AND HUMAN RIGHTS DECISIONS, HANDED DOWN BY ANY OF THE COURTS PRESENT. THIS WAS ACHIEVED BY SENDING THOSE JUDGMENTS TO THE CONSTITUTIONAL COURT OF SOUTH AFRICA TO COLLATE SUCH JUDGMENTS IN A WEB SITE ACCESSIBLE TO THE VARIOUS COURTS. FROM AN EARLY STAGE IMPORTANT DECISIONS OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA WERE ALSO E-MAILED TO THE VARIOUS COURTS ALMOST SIMULTANEOUSLY WITH THE HANDING DOWN OF THE JUDGMENTS IN THAT COURT. ON A FEW OCCASIONS JUDGMENTS SO DISTRIBUTED CAME IN HANDY WHEN WE WERE CONSIDERING MORE OR LESS SIMILAR ISSUES. ON OCCASION OUR MAGISTRATE'S COURT ACT AND ITS CONSTITUTIONALITY WAS BEFORE OUR SUPREME COURT SHORTLY AFTER THE SAME CHALLENGE WAS BROUGHT BEFORE THE CONSTITUTIONAL COURT OF SOUTH AFRICA IN REGARD TO THE ACT APPLICABLE IN THEIR JURISDICTION. WE THEN HAD THE BENEFIT OF CONSIDERING THAT JUDGMENT BY THE CONSTITUTIONAL COURT OF SOUTH AFRICA TOGETHER WITH AND AGAINST THE PROVISIONS OF OUR OWN CONSTITUTION.

I HAVE ALREADY TOUCHED UPON SOME OF THE ADVANTAGES INHERENT IN THIS SYSTEM OF EXCHANGING THE JUDGMENTS OF THE DIFFERENT COURTS. LET ME TAKE IT FURTHER. MOST, IF NOT ALL OF THE SADC COUNTRIES HAVE CONSTITUTIONS CONTAINING A BILL OF RIGHTS. THE FIRST AND SECOND GENERATION OF HUMAN RIGHTS PROVISIONS ARE MOSTLY COINED IN LANGUAGE WHICH DOES NOT DIFFER TO ANY GREAT EXTENT AND GENERALLY ARE EITHER SIMILAR OR CONVEY THE SAME CONCEPT OR MEANING. HAVING A READY-MADE DATABASE, SUCH AS CODICES AVAILABLE WHERE THESE

JUDGMENTS ARE INDEXED AND READILY ACCESSIBLE HOLDS INESTIMABLE ADVANTAGES AND BENEFIT FOR THE REGION.

ALLOW ME TO MENTION ALSO A FEW OTHER ADVANTAGES. NOTWITHSTANDING THE OPINION OF CULTURAL EXCEPTIONALISTS I BELIEVE THAT HUMAN RIGHTS ARE UNIVERSAL. BECAUSE OF THIS IT IS ESSENTIAL THAT WE SHOULD HAVE ACCESS TO THE INTERPRETATIONS OF SUCH RIGHTS BY OTHER COURTS TO ENSURE UNIFORMITY IN THE APPLICATION THEREOF AS FAR AS THE LANGUAGE OF THE PARTICULAR CONSTITUTIONS PERMITS. THE ENFORCEMENT OF THE PROVISIONS OF A BILL OF RIGHTS BY THE COURTS IS A POTENTIAL SOURCE OF CONFLICT BETWEEN THE JUDICIARY AND THE GOVERNMENT AND UNIFORMITY IN THIS REGARD CAN ONLY STRENGTHEN THE HANDS OF THE THIRD PILLAR OF GOVERNMENT.

A CONSTITUTION CONTAINING A BILL OF HUMAN RIGHTS IS A FAIRLY RECENT DEVELOPMENT AS FAR AS STATES IN AFRICA ARE CONCERNED, NOT ONLY FOR THE JUDGES OF THE CONTINENT BUT ALSO FOR THE POLITICIANS AND IT IS IN THIS FIELD, AS PREVIOUSLY POINTED OUT, THAT THERE IS A POTENTIAL OF CONFLICT BECAUSE OF THE DIFFERENCE IN EXPECTATIONS OF WHAT THE CONSTITUTION MEANS AND ALLOWS AND TO WHAT EXTENT LIMITATIONS ARE PLACED ON RESPECTIVE ROLE PLAYERS BY ITS PROVISIONS. ACCESS TO OTHER INTERPRETATIONS IS THEREFORE AN ONGOING EDUCATIONAL PROCESS TO JUDGES AND OTHERS ALIKE. WE LIVE IN AN AGE WHERE TECHNOLOGICAL DEVELOPMENT HAS OPENED UP AVENUES OF COMMUNICATION AND SOURCES OF INFORMATION. WE, AS MEMBERS OF THE JUDICIARY, CAN AND MUST UTILIZE THESE TO ENSURE THE HANDING DOWN OF SOUND JUDGMENTS WHICH WOULD FURTHER ENHANCE THE ESTABLISHMENT AND DEVELOPMENT OF THE RULE OF LAW IN OUR RESPECTIVE COUNTRIES.

THERE IS ALSO NO DOUBT IN MY MIND THAT AN EXCHANGE OF JUDGMENTS AND READY ACCESS THERETO WILL SUPPORT AND STRENGTHEN THE INDEPENDENCE OF THE JUDICIARY. BECAUSE THROUGH THEIR JUDGMENTS COURTS NOW HAVE CONTACT WITH

EACH OTHER AND DRAW STRENGTH AND CONFIDENCE FROM THE FACT THAT OTHER COURTS HAVE ACTED IN A PARTICULAR MANNER.

SEEN PURELY FROM A JUDICIAL PERSPECTIVE THE ADVANTAGE OF HAVING A POOL OF JUDGMENTS, WHICH IS AVAILABLE ON THE MERE PUSH OF A BUTTON, CANNOT BE OVER ESTIMATED. BECAUSE WE ARE FAIRLY RECENT COMERS TO HUMAN RIGHTS ISSUES WE ARE STILL IN THE PROCESS OF DEVELOPING OUR LAW. IN MANY RESPECTS WE ARE BREAKING NEW GROUND, NOT ONLY IN REGARD TO DIFFERENT CONCEPTS WHICH WE MUST MASTER, BUT ALSO IN THE WAY THAT WE SHOULD APPROACH THE CONSTITUTIONAL PROBLEMS AND SHOULD INTERPRET THE PROVISIONS OF THAT INSTRUMENT. THROUGH OUR JUDGMENTS WE ARE STARTING TO CONCRETISE THESE RIGHTS GUARANTEED BY THE CONSTITUTION AND WHEREBY WE PROTECT OUR CITIZENS OR GRANT THEM THE ENJOYMENT OF THOSE RIGHTS.

BECAUSE OF THE SUPPORT AND INITIATIVE OF THE VENICE COMMISSION WE ARE NOT DOING THIS IN ISOLATION. I REMEMBER THAT AT THE FIRST INFORMAL MEETING OF JUDGES OF THE SADC COUNTRIES I PROPOSED THAT WE TAKE A RESOLUTION TO GATHER AT LEAST ONCE EVERY YEAR. ALTHOUGH EVERYBODY FELT THE NEED TO DO SO FINANCIAL CONSTRAINTS WOULD NOT PERMIT THIS AND WE FORESAW THAT WE WOULD PERHAPS BE ABLE TO GATHER ONCE EVERY SECOND OR THIRD YEAR. THIS WAS REGRETTEED BECAUSE AT THESE MEETINGS WE WERE ABLE TO DISCUSS PROBLEMS, WHICH WERE GERMANE TO ALL OUR DIVISIONS. WHAT IS MORE THE FACT THAT WE WERE ABLE TO MEET WITH EACH OTHER AND TO GET TO KNOW EACH OTHER WAS IN ITSELF OF GREAT VALUE.

NOTWITHSTANDING OUR PESSIMISM WE WERE ABLE TO CONVENE MEETINGS EACH YEAR DUE TO THE FACT THAT THE VENICE COMMISSION CONTINUED TO SUPPORT AND HELP US. THIS ENABLED US TO TACKLE PROBLEMS AND TO ASSIST EACH OTHER IN VARIOUS WAYS. IT ALSO ENABLED US TO RUB SHOULDERS WITH LEGAL PERSONALITIES AND JUDGES OF EUROPE, SOME OF WHOM HAVE SERVED ON THE HIGHEST COURTS OF THEIR COUNTRIES AND FROM WHOM WE COULD LEARN ABOUT THE OPERATIONS OF THOSE COURTS.

IT DOES NOT END THERE. AS A SUPPLEMENT TO CODICES WE ARE GIVEN THIS WONDERFUL OPPORTUNITY TO HAVE ALL OUR IMPORTANT HUMAN RIGHTS JUDGMENTS COLLATED AND PUBLISHED IN SUMMARIZED FORM IN THE COMMISSION'S BULLETIN ON CONSTITUTIONAL CASE-LAW. AND THAT LADIES AND GENTLEMEN IS WHERE YOU COME IN. BECAUSE WITHOUT YOUR INDUSTRY AND CONTRIBUTIONS THIS VERY IMPORTANT LINK WHICH WE HAVE WITH THE VENICE COMMISSION AND WHICH THEY SO GENEROUSLY MADE AVAILABLE, AND THEIR SUPPORT, WILL COME TO NAUGHT. WE CANNOT AND SHOULD NOT ALLOW THIS TO HAPPEN. I KNOW THAT IT IS SOMETIMES A TEDIOUS TASK TO READ THROUGH A JUDGMENT IN ORDER TO FIND OUT WHAT IT IS ABOUT AND TO SUMMARIZE AND TO INDEX IT BUT WITHOUT THAT INPUT FROM YOU WE WILL NOT BE ABLE TO UTILIZE THIS OPPORTUNITY AND TO REAP THE BENEFITS THAT IT PRESENTS TO US.

THE FACT THAT IT WAS DECIDED TO ORGANIZE A SECOND SEMINAR FOR LIAISON OFFICERS AND THAT IT WAS THOUGHT TO BE WORTHWHILE TO INCUR THE EXPENSE TO BRING YOU TOGETHER AND TO LINE UP EXPERTS TO ASSIST AND LECTURE YOU, IS FOR ME A CLEAR SIGN THAT OUR PARTNERSHIP WITH THE VENICE COMMISSION IS FAR FROM OVER. WE AS MEMBERS OF THE JUDICIARY OF OUR RESPECTIVE COUNTRIES CAN LOOK FORWARD TO CONTINUE TO LEARN FROM EACH OTHER'S JUDGMENTS THROUGH THIS PROCESS OF CROSS-POLLINATION. WHO KNOWS, WE MAY ONE DAY BE ABLE TO LOOK BACK AND SAY THAT THESE WERE THE FIRST STEPS TAKEN IN THE DIRECTION OF ESTABLISHING, FOR AFRICA, A COURT OF HUMAN RIGHTS. YOUR TASK MAY SOMETIMES BE TEDIOUS BUT IT IS A MOST IMPORTANT ONE WITHOUT WHICH WE CANNOT SUCCEED.

I THEREFORE WISH YOU A VERY FRUITFUL AND INSTRUCTIVE SEMINAR.

THANK YOU LADIES AND GENTLEMEN.